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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 131108946-5999-02]

RIN 0648-BD76

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Dolphin and Wahoo Fishery Off the Atlantic States and Snapper-
Grouper Fishery of the South Atlantic Region; Amendments 7/33**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 7 to the Fishery Management Plan (FMP) for the Dolphin and Wahoo Fishery off the Atlantic States (Dolphin and Wahoo FMP) and Amendment 33 to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP) (Amendments 7/33), as prepared and submitted by the South Atlantic Fishery Management Council (Council). This final rule revises the landing fish intact provisions for vessels that lawfully harvest dolphin, wahoo, or snapper-grouper in or from Bahamian waters and return to the U.S. exclusive economic zone (EEZ). The U.S. EEZ as described in this final rule refers to the Atlantic EEZ for dolphin and wahoo and

the South Atlantic EEZ for snapper-grouper species. The purpose of this final rule is to improve the consistency and enforceability of Federal regulations with regards to landing fish intact provisions for vessels transiting from Bahamian waters through the U.S. EEZ and to increase the social and economic benefits related to the recreational harvest of these species.

DATES: This final rule is effective [*insert date 30 days after date of publication in the* **FEDERAL REGISTER**].

ADDRESSES: Electronic copies of Amendments 7/33, which includes an environmental assessment, regulatory impact review, and Regulatory Flexibility Act analysis, may be obtained from the Southeast Regional Office Web site at http://sero.nmfs.noaa.gov/sustainable_fisheries/s_atl/generic/2015/dw7_sg33/index.html.

FOR FURTHER INFORMATION CONTACT: Nikhil Mehta, telephone: 727-824-5305, or e-mail: nikhil.mehta@noaa.gov.

SUPPLEMENTARY INFORMATION: The dolphin and wahoo fishery is managed under the Dolphin and Wahoo FMP and the snapper-grouper fishery is managed under the Snapper-Grouper FMP. The FMPs were prepared by the Council and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On September 17, 2015, NMFS published a notice of availability for Amendments 7/33 and requested public comment (80 FR 55819). On October 7, 2015, NMFS published a proposed rule for Amendments 7/33 and requested public comment (80 FR 60601). The proposed rule and Amendments 7/33 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by Amendments 7/33 and this final rule is provided below.

Current Federal regulations require that dolphin or wahoo or snapper-grouper species onboard a vessel traveling through the U.S. EEZ be maintained with the heads and fins intact and not be in fillet form. However, as implemented through Amendment 8 to the Snapper-Grouper FMP, an exemption applies to snapper-grouper species that are lawfully harvested in Bahamian waters and are onboard a vessel returning to the U.S. through the U.S. EEZ (63 FR 38298, July 16, 1998). That exemption allows that in the South Atlantic EEZ, snapper-grouper lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided valid Bahamian fishing and cruising permits are on board the vessel and the vessel remains in transit through the South Atlantic EEZ.

The Bahamas does not allow for the commercial harvest of dolphin, wahoo, or snapper-grouper by U.S. vessels in Bahamian

waters. Therefore, the measures in this final rule only apply to the recreational harvest of these species by vessels returning from The Bahamas to the U.S. EEZ. This final rule will not change potential liability under the Lacey Act, which makes it unlawful to import, export, sell, receive, acquire, or purchase fish that are taken, possessed, transported or sold in violation of any foreign law.

Management Measures Contained in this Final Rule

This final rule revises the landing fish intact provisions for vessels that lawfully harvest dolphin, wahoo, or snapper-grouper in Bahamian waters and return to the U.S. EEZ. This final rule allows for dolphin and wahoo fillets to enter the U.S. EEZ after lawful harvest in The Bahamas; specifies the condition of any dolphin, wahoo, and snapper-grouper fillets; describes how the recreational bag limit is determined for any fillets; explicitly prohibits the sale or purchase of any dolphin, wahoo, or snapper-grouper recreationally harvested in The Bahamas; specifies the required documentation to be onboard any vessels that have these fillets, and specifies transit and stowage provisions for any vessels with fillets.

Landing Fish Intact

Currently, all dolphin or wahoo in or from Atlantic EEZ are required to be maintained with head and fins intact. This final

rule allows for dolphin or wahoo lawfully harvested in Bahamian waters to be exempt from this provision when returning through the Atlantic EEZ under certain circumstances. Allowing these vessels to be exempt from the landing fish intact regulations increases the social and economic benefits for recreational fishers returning to the U.S. EEZ from Bahamian waters. This final rule also provides increased consistency between the dolphin and wahoo and snapper-grouper regulations for vessels possessing fillets of these species and transiting from Bahamian waters through the U.S. EEZ.

Snapper-grouper possessed in the South Atlantic EEZ are currently exempt from the landing fish intact requirement under certain conditions if the vessel lawfully harvested the snapper-grouper in The Bahamas. Amendments 7/33 and this final rule retain this exemption and revise it to include additional requirements.

The Council and NMFS note that this exemption only applies to the landing fish intact provisions for fish in the U.S. EEZ, and does not exempt fishers from any other Federal fishing regulations such as fishing seasons, recreational bag limits, and size limits.

Condition of Fillets

To better allow for identification of the species of any

fillets in the U.S. EEZ, this final rule requires that the skin be left intact on the entire fillet of any dolphin, wahoo, or snapper-grouper carcass on a vessel in transit from Bahamian waters through the U.S. EEZ. This requirement is intended to assist law enforcement in identifying fillets to determine whether they are the species lawfully exempted by this final rule.

Recreational Bag Limits

Currently, all dolphin, wahoo, and snapper-grouper species harvested or possessed in or from the U.S. EEZ are required to adhere to the U.S. bag and possession limits. This final rule does not revise the bag and possession limits, but specifies how fillets are counted with respect to determining the number of fish onboard a vessel in transit from Bahamian waters through the U.S. EEZ and ensuring compliance with U.S. bag and possession limits. This final rule specifies that for any dolphin, wahoo, or snapper-grouper species lawfully harvested in Bahamian waters and onboard a vessel in the U.S. EEZ in fillet form, two fillets of the respective species of fish, regardless of the length of each fillet, are equivalent to one fish. This measure will assist law enforcement in enforcing the relevant U.S. bag and possession limits.

Sale and Purchase Restrictions of Recreationally Harvested

Dolphin, Wahoo or Snapper-Grouper

This final rule explicitly prohibits the sale or purchase of any dolphin, wahoo, or snapper-grouper species recreationally harvested in Bahamian waters and returned to the U.S. through the U.S. EEZ. The Council determined that establishing a specific prohibition on the sale or purchase of any of these species from The Bahamas was necessary to ensure consistency with the current Federal regulations that prohibit recreational bag limit sales of these species.

Required Documentation

This final rule revises the documentation requirements for snapper-grouper species and implements documentation requirements for dolphin and wahoo harvested in Bahamian waters and onboard a vessel in transit through the U.S. EEZ. For dolphin, wahoo, or snapper-grouper fillets lawfully harvested in Bahamian waters and on a vessel transiting through the U.S. EEZ, this final rule requires that valid Bahamian fishing and cruising permits are onboard and additionally requires that all vessel passengers have valid government passports with current stamps and dates. Requiring valid Bahamian fishing and cruising permits on the vessel and requiring each vessel passenger to have a valid government passport with current stamps and dates from The Bahamas increases the likelihood that the vessel and

passengers were lawfully fishing in The Bahamas, and thereby increases the likelihood that any dolphin, wahoo, or snapper-grouper fillets on the vessel were lawfully harvested in Bahamian waters and not in the U.S. EEZ.

Transit and Stowage Provisions

This final rule revises the snapper-grouper transit provisions, applies the transit provisions to vessels operating under the exemption for dolphin and wahoo, and requires fishing gear to be appropriately stowed on a vessel transiting through the U.S. EEZ with fillets of these species. The definition for "fishing gear appropriately stowed" means that "terminal gear (*i.e.*, hook, leader, sinker, flasher, or bait) used with an automatic reel, bandit gear, buoy gear, handline, or rod and reel must be disconnected and stowed separately from such fishing gear. Sinkers must be disconnected from the down rigger and stowed separately." The Council determined that specifying criteria for transit and fishing gear stowage for vessels returning from The Bahamas with fillets of dolphin, wahoo, or snapper-grouper species would assist with the enforceability of the regulations and increase consistency with the state of Florida's gear stowage regulations.

Comments and Responses

A total of three comment submissions were received on

Amendments 7/33 and the proposed rule from individuals and a state agency. The state agency stated that it strongly supported the actions in Amendments 7/33 and the proposed rule. Specific comments in the two other comment submissions related to the actions contained in Amendments 7/33 and the proposed rule, and NMFS' respective responses, are summarized below.

Comment 1: Large-sized dolphin may be filleted into more than two pieces per fish. The average size of dolphin fillets is large, and therefore, these large fillets cannot be transported properly from The Bahamas without destroying the quality of the meat.

Response: NMFS agrees that dolphin and wahoo can grow to large sizes, that it is possible to fillet a dolphin into more than two pieces per fish, and that cooler space may be limited on small boats. At its March 2014 meeting, the Council's Dolphin Wahoo Advisory Panel indicated that the quality of dolphin and wahoo caught on trips in The Bahamas and brought through U.S. Federal waters as fillets would be improved, because whole fish would not have to be stored with head and fins intact. In addition, allowing fillets of these species would make it easier for fishers in small boats to transport dolphin and wahoo back through the U.S. EEZ from Bahamian waters. The Council also determined that specifying two fillets as one fish for the

purposes of determining the recreational bag and possession limits will assist law enforcement in enforcing these limits when applied to fishers with fillets of dolphin onboard that were harvested in The Bahamas and transiting through U.S. Federal waters.

Comment 2: Non-compliance with the landing fish intact exemption will be an issue unless different recreational bag limit options are considered, such as setting the bag limit by weight of fillets. For example, a 20 lb (9 kg) per species per person would be a reasonable bag limit well within the Bahamian recreational catch limits.

Response: NMFS disagrees. In developing Amendments 7/33, the Council considered using weight of fillets for determining the bag limit, but testimony from law enforcement officials and the U.S. Coast Guard established that it is not practical to weigh fish at sea. The Council discussed the issues of fish size and number of fillets obtainable from a dolphin, and, given the overall positive public support for allowing fillets, and balancing the needs for an effective law enforcement program, the Council determined that the most appropriate and enforceable means of determining compliance with recreational bag limits was to count two fillets of dolphin as one fish.

Comment 3: NMFS is violating the rights of U.S. flagged vessels by not allowing fishing in U.S. Federal waters while in transit from The Bahamas.

Response: NMFS disagrees. The final rule implementing Amendments 7/33 provides an exemption to the existing requirement that dolphin and wahoo and snapper-grouper species be maintained with the heads and fins intact in the U.S. EEZ and not be in fillet form. If fishers on U.S. flagged vessels transiting through the U.S. EEZ from The Bahamas choose to be exempted from the requirement to maintain those species with heads and fins intact, they must comply with the conditions of that exemption, which include a prohibition on fishing in the U.S. EEZ. The prohibition on fishing in the EEZ being implemented in this final rule for fishers transiting from The Bahamas and in possession of dolphin and wahoo fillets will make the regulations for these species consistent with the existing transit provisions for snapper-grouper species implemented by the final rule for Amendment 8 to the Snapper-Grouper FMP (63 FR 38298, July 16, 1998). Additionally, the NMFS Office of Law Enforcement has stated that it would be difficult to determine if a U.S. flagged vessel with fillets of dolphin and wahoo on board, and then fishing in the U.S. EEZ on return from The Bahamas, caught the fish in The Bahamas.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the conservation and management of South Atlantic snapper-grouper and Atlantic dolphin and wahoo and is consistent with the Amendments 7/33, the FMPs, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Atlantic, Dolphin, Fillets, Fisheries, Fishing, Snapper-Grouper, Wahoo.

Dated: December 21, 2015.

Eileen Sobeck,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.186, revise paragraph (b) to read as follows:

§ 622.186 Landing fish intact.

* * * * *

(b) In the South Atlantic EEZ, snapper-grouper lawfully

harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided that the skin remains intact on the entire fillet of any snapper-grouper carcasses, valid Bahamian fishing and cruising permits are on board the vessel, each person on the vessel has a valid government passport with current stamps and dates from The Bahamas, and the vessel is in transit through the South Atlantic EEZ with fishing gear appropriately stowed. For the purpose of this paragraph, a vessel is in transit through the South Atlantic EEZ when it is on a direct and continuous course through the South Atlantic EEZ and no one aboard the vessel fishes in the EEZ. For the purpose of this paragraph, fishing gear appropriately stowed means that terminal gear (*i.e.*, hook, leader, sinker, flasher, or bait) used with an automatic reel, bandit gear, buoy gear, handline, or rod and reel must be disconnected and stowed separately from such fishing gear. Sinkers must be disconnected from the down rigger and stowed separately. See § 622.187(a)(3) for the limit of snapper-grouper fillets lawfully harvested from Bahamian waters that may transit through the South Atlantic EEZ.

3. In § 622.187, add paragraph (a)(3) to read as follows:

§ 622.187 Bag and possession limits.

(a) * * *

(3) In the South Atlantic EEZ, a vessel that lawfully harvests snapper-grouper in Bahamian waters, as per § 622.186 (b), must comply with the bag and possession limits specified in this section. For determining how many snapper-grouper are on board a vessel in fillet form when harvested lawfully in Bahamian waters, two fillets of snapper-grouper, regardless of the length of each fillet, is equivalent to one snapper-grouper. The skin must remain intact on the entire fillet of any snapper-grouper carcass.

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4. In § 622.192, add paragraph (k) to read as follows:

§ 622.192 Restrictions on sale/purchase.

* * * * *

(k) Snapper-grouper possessed pursuant to the bag and possession limits specified in § 622.187(a)(3) may not be sold or purchased.

5. Revise § 622.276 to read as follows:

§ 622.276 Landing fish intact.

(a) Dolphin or wahoo in or from the Atlantic EEZ must be maintained with head and fins intact, except as specified in paragraph (b) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition. The operator of a vessel that fishes in the EEZ is

responsible for ensuring that fish on that vessel in the EEZ are maintained intact and, if taken from the EEZ, are maintained intact through offloading ashore, as specified in this section.

(b) In the Atlantic EEZ, dolphin or wahoo lawfully harvested in Bahamian waters are exempt from the requirement that they be maintained with head and fins intact, provided that the skin remains intact on the entire fillet of any dolphin or wahoo carcasses, valid Bahamian fishing and cruising permits are on board the vessel, each person on the vessel has a valid government passport with current stamps and dates from The Bahamas, and the vessel is in transit through the Atlantic EEZ with fishing gear appropriately stowed. For the purpose of this paragraph, a vessel is in transit through the Atlantic EEZ when it is on a direct and continuous course through the Atlantic EEZ and no one aboard the vessel fishes in the EEZ. For the purpose of this paragraph, fishing gear appropriately stowed means that terminal gear (*i.e.*, hook, leader, sinker, flasher, or bait) used with an automatic reel, bandit gear, buoy gear, handline, or rod and reel must be disconnected and stowed separately from such fishing gear. Sinkers must be disconnected from the down rigger and stowed separately.

6. In § 622.277, revise paragraphs (a)(1) and (2) to read as follows:

§ 622.277 Bag and possession limits.

* * * * *

(a) * * *

(1) *Dolphin*. (i) In the Atlantic EEZ--10, not to exceed 60 per vessel, whichever is less, except on board a headboat, 10 per paying passenger.

(ii) In the Atlantic EEZ and lawfully harvested in Bahamian waters (as per § 622.276(b))--10, not to exceed 60 per vessel, whichever is less, except on board a headboat, 10 per paying passenger. For the purposes of this paragraph, for determining how many dolphin are on board a vessel in fillet form when harvested lawfully in Bahamian waters, two fillets of dolphin, regardless of the length of each fillet, is equivalent to one dolphin. The skin must remain intact on the entire fillet of any dolphin carcass.

(2) *Wahoo*. (i) In the Atlantic EEZ--2.

(ii) In the Atlantic EEZ and lawfully harvested in Bahamian waters (as per § 622.276(b))--2. For the purposes of this paragraph, for determining how many wahoo are on board a vessel in fillet form when harvested lawfully in Bahamian waters, two fillets of wahoo, regardless of the length of each fillet, is equivalent to one wahoo. The skin must remain intact on the entire fillet of any wahoo carcass.

* * * * *

7. In § 622.279, add paragraph (d) to read as follows:

§ 622.279 Restrictions on sale/purchase.

* * * * *

(d) Dolphin or wahoo possessed pursuant to the bag and possession limits specified in § 622.277(a)(1)(ii) and (a)(2)(ii) may not be sold or purchased.

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